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No. 83-264

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

CALVIN W. BURNETT,
PRESIDENT OF COPPIN STATE COLLEGE;
J. CARSON DOWELL; EDMUND C. MESTER; AND
RONALD K. DESOUZA,
VICE PRESIDENT OF STUDENT AFFAIRS, COPPIN STATE COLLEGE,
Petitioners,

v.

JAMES R. GRATTAN AND ADRIENNE S. HEDMAN,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FOURTH CIRCUIT

REPLY BRIEF OF PETITIONERS

STEPHEN H. SACHS,
Attorney General of Maryland,

PAUL F. STRAIN,
Deputy Attorney General,

DIANA GRIBBON MOTZ,
CHRISTINE STEINER,
ROBERT A. ZARNOCH,
Assistant Attorneys General,
Counsel of Record,
Seven North Calvert Street,
Baltimore, Maryland 21202,
(301) 576-6338,
Counsel for Petitioners.

The Daily Record Co., Baltimore, MD 21202

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INTRODUCTION

Respondents argue that there is a longer (three-year) limitations period within Maryland's fair employment statute and either it or the State's three-year catch-all limitations period should apply to a § 1983 employment discrimination suit. However, unless the Maryland statute is distorted and its provisions ignored, it is apparent that the Maryland fair employment practice statute contains no statute of limitations other than the six-month period. Moreover, Respondents have not explained — indeed have

not suggested — how a catch-all limitations statute could be more analogous to a § 1983 employment discrimination suit than a fair employment statute explicitly providing a remedy for employment discrimination.

Respondents' real objection seems to be to (1) borrowing the limitations period from a statute that is not purely judicial and (2) applying a "too short" six-month period to any § 1983 cause of action. Yet this Court's recent holding in *DelCostello v. International Brotherhood of Teamsters*, 103 S. Ct. 2281 (1983) and the striking parallels between Art. 49B and § 10(b) demonstrate that Respondents have no *legal* basis for their objection to the nature of the Art. 49B process. Furthermore, while it is clear that a feeling that six months is "too short" animated the opinion below, as well as Respondents' position, Respondents totally ignore the leavening impact of liberal pleading and amendment procedures. More importantly, they have not confronted the history of the civil rights statutes and this Court's recent decisions, all establishing that six months is not "too short" in any abstract, or categorical sense. In fact the six-month limitation of Art. 49B not only governs the most analogous state cause of action, but is a reasoned, deliberate reflection of an existing national policy favoring prompt filing of employment disputes. Accordingly, it should be applied by this Court to Respondents' § 1983 employment discrimination suit.

ARGUMENT

ART. 49B PROVIDES MARYLAND'S MOST ANALOGOUS LIMITATIONS PERIOD FOR BIAS SUITS BROUGHT BY PUBLIC EMPLOYEES UNDER 42 U.S.C. § 1983 AND SHOULD NOT BE REJECTED JUST BECAUSE IT GOVERNS AN ADMINISTRATIVE-JUDICIAL REMEDY.

Respondents Grattan and Hedman acknowledge, as they must, that the statute of limitations covering the most analogous state cause of action must control their action. In their attempt to circumvent Maryland Art. 49B, however, Respondents (1) mischaracterize that important

Maryland statute, and (2) skip past this Court's recent application of a statute of a limitations governing a similar administrative-judicial remedy.

(1) Respondents' mischaracterization of Art. 49B begins with their description of the complaint which initiates the Art. 49B process. They state, for example, that the person against whom a complaint is made is not "put on notice" of the nature of the complaint until he receives a Commission complaint "detail[ing] the particulars of the charges against [him]." Respondents' Brief, p. 11. That is simply incorrect. An Art. 49B complainant must set forth the "particulars" of the claimed act of discrimination, Art. 49B, § 9(a), and must do so under oath. *Id.*[1] The requirement of particularity ensures that the sworn complaint cannot be filed without factual averment of a discriminatory practice, *State Commission on Human Relations v. Baltimore County*, 46 Md. App. 45, 415 A.2d 856 (1980), and a complainant who sets forth improper allegations for malicious reasons is subject to criminal penalties. Art. 49B, § 12(b).

Obviously, in terms of formality and gravity, the Art. 49B complaint compares favorably with a complaint filed in compliance with Rule 8(a) of the Federal Rules of Civil Procedure. (A "short and plain statement of the claim"). Both are "notice pleading", subject to similar amendment rules (*compare* F.R.C.P. 15 with COMAR 14.03.01.02, "amendment to allege additional acts . . . which are related to or grow out of the subject matter of the original complaint"), and not — properly — to be taken lightly. It should be apparent that challenging an employment decision under Art. 49B imposes requirements that are distinctly similar to filing a § 1983 complaint, and Respondents' assertions to the contrary are inexplicable.

[1] The particularized complaint must be served on the respondent-employer by Commission staff. COMAR 14.03.01.02.F.1.

Respondents' mischaracterization of Art. 49B extends beyond their assertion that the complaint need not contain particulars. They also confuse the structure of that statute, and suggest — erroneously — that there is a Commission complaint subject to a three-year time period that should be the model. It is true that the Commission by rule has given itself two years to investigate a complaint. COMAR 14.03.01.03.A. It is not true that the Commission investigation, or the "written findings" that ensue are in any way analogous to a private § 1983 discrimination action. The Commission is given time to complete an evaluation investigation, permitting Commission staff to make findings, after gathering "all information necessary and relevant to the making of a fair determination of the alleged discrimination." COMAR 14.03.01.03.A. The time period allotted for the weighing and evaluation is necessarily longer than that given to a complainant to make an allegation on a matter as to which he or she has personal knowledge.

To characterize Commission probable cause findings as a "complaint", and suggest that the time period allotted for that agency fact finding is a statute of limitations at all, let alone one covering an analogous cause of action, as Respondents do, (Respondents' Brief, p. 15) can hardly assist this court.[2]

Though the Maryland statute, like Title VII, gives the administrative agency the option of issuing a Commission complaint, that institutional allegation is not covered by a three-year time limit and it may be wholly unrelated to any individual complaint.[3] Art. 49B, § 9(b). When an

[2] If the "written finding" is one of probable cause to believe discrimination has occurred, and if conciliation fails, the written finding becomes incorporated within a statement of charges by Commission general counsel. COMAR 14.03.01.07.B.

[3] No limitations period is specified for the Commission complaint, and no Maryland case has decided whether such a

individual has complained, the Commission need issue no complaint at all, and normally does not.

In short, there is absolutely no justification for Respondents' claim that the Commission complaint, in those rare cases where there is a Commission complaint, is the better analogy to a § 1983 bias action. Nor is there any justification for Respondents' claim that an Art. 49B complaint lacks the dignity and formality, and does not entail the level of preparation, of a § 1983 complaint. The Art. 49B complaint initiates a serious and important state proceeding, of the type that Congress specifically encouraged when it enacted Title VII, *Kremer v. Chemical Construction Corp.*, 456 U.S. 461 (1982), and embodies a state of action that is wholly analogous to Respondents' § 1983 suit.

(2) In fact, it has become clear that Respondents object, not to any specific aspect of Art. 49B, but to borrowing the limitations period of *any* administrative-judicial process. The Respondent employees offer no serious justification for their position, however. Nor do they confront the holding of this Court in *DelCostello* to the contrary — explicitly choosing a six-month limitation period for filing an *administrative* complaint over state statutes of limitation that the Court considered imperfect analogies.[4] In *DelCostello*, though two Justices expressed concern with the

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complaint is covered by the six-month period or is truly unlimited in time. It was the uncommon Commission complaint mechanism that the court dealt with in *Banach v. St. Comm. on Human Relations*, 277 Md. 502, 356 A.2d 242 (1976), holding that no particularity is required for that institutional complaint. *Banach* is discussed in the later case of *St. Comm. on Human Relations v. Baltimore County*, *supra*, which concerned an individual complaint and applied the statutory requirement of particularity.

[4] If the Court in the instant case were to reject any of the state statute of limitations and search for a federal limitations period, the limitations period obviously applicable would be that of Title VII — which is six months, the same as the period of Art. 49B.

propriety of applying a federal limitations period in lieu of a state limitations period, no member of the Court suggested that the application of a limitation period governing the filing of an administrative complaint was in any way improper or even controversial. In fact, the plain language of *DelCostello* suggests that the Court's focus must be on the closest analogy to the given § 1983 cause of action, not on some artificial characterization of the nature of the analogous proceeding as primarily judicial or administrative.

DelCostello should control the result in the instant case. The parallels between § 10b of the National Labor Relations Act, which the Court borrowed in *DelCostello*, and Art. 49B, could not be more striking. Both involve a complaint which triggers an administrative investigation. Both complaints (the § 10b complaint is called a "charge", 29 C.F.R. § 101.2) are subject to probable cause evaluation, and findings, before a hearing will be held. (The Maryland agency makes "written findings", COMAR 14.03.01.03.A; Board counsel render a "determination". 29 C.F.R. § 101.4-8.) Neither complaint leads directly or immediately to court action. Both require a succinct factual allegation (29 C.F.R. § 102.12(d): "a clear and concise statement of the facts constituting the alleged unfair labor practices"; Art. 49B, § 9(a): "together with the particulars thereof"). Both call for conciliation efforts before and after the initial administrative investigation. Art. 49B, § 10b; COMAR 14.03.01.04; 29 C.F.R. § 101.7, .9. Both lead to an administrative hearing at which the administrative agency is at least nominally the presenter of evidence. Both provide reinstatement and backpay.[5]

[5] The striking parallels between the Art. 49B processes and the National Labor Relations Act processes should not be surprising. The National Labor Relations Act was the model for many modern administrative processes, including that of Title VII. *Albemarle Paper Co. v. Moody*, 422 U.S. 405 (1975). Title VII, in turn, set the standard for state fair employment practice laws after 19[illegible]

If the limitations period of Art. 49B complaint is insufficiently judicial ("fundamental dissimilarity of judicial and administrative schemes" is Respondents' term, Respondents' Brief, p. 25) then so too would have been § 10b of the National Labor Relations Act, and *DelCostello* would have *rejected* the NLRA complaint period. But the Court did not reject it. The Court borrowed the § 10b six-month period as most analogous to a § 301 judicial cause of action, choosing § 10(b) as more analogous to the § 301 judicial action than any state judicial cause of action. And no member of the Court suggested that use of the limitation period for that "administrative" cause of action was objectionable. *DelCostello, supra.* It is no wonder that Respondents passed by *DelCostello* so quickly.

In § 301 actions, as in § 1983 actions, the Court's duty is to determine the limitations period covering the most analogous cause of action. It did so in *Autoworkers v. Hoosier Cardinal Corp.*, 383 U.S. 696 (1965), determining that the nature of the cause of action made the six-year limitation the appropriate period for that § 301 suit. It did so in *DelCostello* and *United Parcel Service v. Mitchell*, 451 U.S. 56 (1981), choosing six month and 90-day limitations periods, as periods covering the most analogous causes of actions for those § 301 suits. The Court's duty here is to do no more, and no less, and a fair analysis of the Maryland statute demonstrates clearly that the six-month limitations period of Art. 49B is the closest possible analogy. 42 U.S.C. § 1988, and the Court's prior cases, including *Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454 (1975); *Robertson v. Wegman*, 436 U.S. 584 (1978); and *Board of Regents v. Tomanio*, 446 U.S. 478 (1980), compel application of Maryland's fair employment practice law limitation period.

In fact, rejecting Art. 49B because it is a combined administrative and judicial statute not only would conflict with *DelCostello*, but would also be completely at odds with the Court's recent decision in *Kremer*, *supra*, 456

U.S. 461 and *Migra v. Warren City School Dist. Bd. of Educ.*, 104 S. Ct. 892 (1984). The Maryland Human Relations Commission's disposition of an Art. 49B complaint, reviewed in court, would have claim preclusive effect on a § 1983 suit. *Migra, supra.* For this Court to follow *Kremer* and *Migra* with a decision that Art. 49B — entirely suitable for claim preclusion — was insufficiently judicial to borrow its limitations period, would be, at best, a terrible irony.

That irony, that unfairness, would be compounded in the case of a Maryland public employment dispute, for the Art. 49B process replaced a wholly judicial cause of action that was itself a nearly perfect analogy to a § 1983 public employment suit.[6]

THE MARYLAND STATUTE IS NOT INCONSISTENT WITH SECTION 1983 SIMPLY BECAUSE IT PROVIDES A SIX MONTH LIMITATIONS PERIOD.

The heart of the Respondents' position is that a six month limitation is simply too short to be consistent with § 1983. Respondents' Brief pp. 30-42. Their reasoning

[6] An action for mandamus affords both legal (Maryland Rule BE 44) and equitable (Maryland Rules BF 1 *et. seq.*) relief, and has long been the traditional remedy in Maryland for public employees to challenge improper removal from their employment. Petitioners' Brief, pp. 21-23. *See also United States Ex Rel Arant v. Lane*, 249 U.S. 367 (1919) for an example of similar use of mandamus. The traditionally short mandamus laches period (see Petitioners' Brief, p. 23) complements the Maryland legislative judgment to require prompt filing of an Art. 49B action. And the history of the use of mandamus in Maryland for such purposes and its replacement by Art. 49B clearly corroborates the analysis of the Art. 49B cause of action itself, *i.e.*, that 49B provides a cause of action closely analogous to the cause of action asserted by Respondents under § 1983. While Respondents assert that the writ of mandamus is not analogous to a § 1983 public employment action, they cite only *Pauk v. Board of Trustees*, 654 F.2d 856 (2d. Cir. 1981) *cert. denied*, 455 U.S. 1000 (1982) in which the court made that assertion, categorically, as to all § 1983 actions, without citation and even without explanation.

seems to be that the civil rights statutes are important and remedial, and that a shorter limitations period is necessarily inconsistent with such statutes.

They ignore, of course, the teaching of this Court in such cases as *Robertson v. Wegmann* that application of state law is not inconsistent with § 1983, "merely because the statute causes the plaintiff to lose the litigation." *Robertson v. Wegmann, supra,* 593. They ignore, also, the history of short limitations periods during the reconstruction years, history which suggests strongly that the Reconstruction Era congresses — which enacted § 1983 and § 1988 specifying reliance on state law — would have been quite comfortable with a six month limitation period for a § 1983 suit. *See* Petitioners' Brief, 35-36.

Respondents cite *DelCostello* as the lone example of a limitations period rejected by this Court because it was "too short." Respondents' Brief at 33. They neglect to confront the facts that while the Court rejected a ninety day limitations period in *DelCostello* for one type of § 301 action, it found the same ninety-day period wholly satisfactory for another § 301 action, *United Parcel Service v. Mitchell, supra,* and that in *DelCostello* itself the Court endorsed and adopted a six-month limitation period.[7] *DelCostello* and *United Parcel Service v. Mitchell* are apt and very recent examples of the Court's adoption of a limitation period of six months or less as a fully sufficient period of time for filing federal statutory lawsuits in federal court.

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[7] The Court's concern with the length of the limitations period in *DelCostello* was due less to the adequacy of New York's ninety-day period, than to the existence of similar statutes in other states with time limits of thirty, twenty, even ten days, *DelCostello,* 2291, n.15, short time periods that the Court felt might exacerbate problems of the accrual of a "denial" of fair representation. *DelCostello,* 2291, n.16.

And though Respondents seek to disparage the § 301 cause of action dealt with in *DelCostello* (passing it off, for example, as a "labor dispute resolution mechanism", Respondents' Brief, p. 40) the *DelCostello* decision itself evidences the Court's appreciation of the tasks confronting that § 301 litigant before his suit could be filed. The Court noted that the § 301 plaintiff would need time to: 1) retain counsel; 2) evaluate the adequacy of the union's representation; 3) investigate substantial matters that were not at issue in the arbitration proceeding and 4) frame his suit. *DelCostello, supra*, 2291. The Court held, of course, that six months was *adequate* for all such preparatory steps and that even the shorter ninety-day limitations period might have to suffice for each of those steps "if state law were the only source reasonably available for borrowing, as it often is." *Id.*, 2293.

In a § 1983 employment discrimination suit — particularly a discharge case — the issues involved may be much more readily apparent than issues found in a fair representation suit under § 301. The instant case is an appropriate example. Respondents are white employees of a predominately black-managed institution, who claimed dissimilarity of treatment compared to their black colleagues. Evidence at trial of some such suits could be complex, but the cause of action is not a conceptually difficult one. If § 301 causes of action, such as those dealt with in *DelCostello* or *United Parcel Service v. Mitchell*, can be adequately investigated and articulated in six months or less, surely Respondents' § 1983 suit can be as well.

Obviously, there is no practical barrier to prompt assertion of § 1983 employment discrimination claims and no barrier to use of the state law of limitations contemplated by Congress in § 1988.

There is an even more fundamental error underlying Respondents' argument that something in the nature of

the civil rights statutes makes them completely inconsistent with a six-month limitation. Respondents have posited the existence of a broad, across-the-board "appropriate" limitations period, acceptable and proper in some Platonic sense no matter what the § 1983 cause of action. That assumption is bad law, inconsistent with precedents of this Court. It necessarily disregards the fact that a § 1983 employment discrimination suit *is* an employment discrimination suit, should be analogized to a similar employment discrimination cause of action, and must be considered along with the existing national policy favoring prompt filing of such complaints, a policy that Maryland shares with most states — at least thirty [8] — and the United States, *e.g.*, Title VII, Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-5(e) and 2000e-16(c); Age Discrimination in Employment Act, 29 U.S.C. § 626; Labor Management Relations Act, 61 Stat. 146, 29 U.S.C. § 160(b). This policy has in fact often been noted by this Court. *See e.g. DelCostello v. Teamsters*, 103 S. Ct. 2281 (1983); *United Parcel Service, Inc. v. Mitchell*, 451 U.S. 56, 63 (1981); *Clayton v. Autoworkers*, 451 U.S. 679, 693 (1981); *Union Pacific Railroad Co. v. Sheehan*, 439 U.S. 89, 94 (1978); *Machinists v. Central Airlines*, 372 U.S. 682, 689 (1963); *United States ex rel Arant v. Lane, supra.*

The national policy evident in each of these statutes and opinions reflects the undesirability of holding "in limbo for long periods", *United Parcel Service, Inc. v. Mitchell, supra*, at 1565, important employment decisions. And while that may be fairly said of the car washer's job at issue in *Mitchell*, it should be said with all the more conviction in public employment cases. A consideration of the jobs performed by Respondents Grattan and Hedman is instructive. Respondents Grattan and Hedman, both white, were, respectively, Director of Minority Relations and Minority Recruitment Counselor at the predominantly black Coppin State College. The mission of

[8] *See* Petition for Writ of Certiorari, p. 10, n.7.

their Office of Minority Relations was to increase minority enrollment at Coppin State College. Whether their discharge was due to their race as they allege, or their performance as the College advised them, A.34-39, it should go without saying that the mission of Coppin's Office of Minority Relations cannot be effectively carried out without a Director or with an acting or temporary director.

The facts of the very case before the Court graphically underscore the reasonableness of the national policy of prompt resolution of employment disputes, especially in the public context. Application of Art. 49B's requirement of *prompt* filing of such claims can hardly be termed "inconsistent with the federal policy underlying the cause of action under consideration." *Johnson v. Railway Express Agency, supra,* 465; *Board of Regents v. Tomanio, supra,* 485. The fact that an employee's discharge is challenged by a § 1983 suit rather than by a § 301 suit as in *DelCostello* and *United Parcel Service v. Mitchell,* should not make this Court suddenly reluctant to apply a state limitations period that reflects the state's own "value judgment," *Johnson v. Railway Express Agency, supra,* 464, and the national policy.

The Respondent employees do not deny, for they cannot, the national policy in favor of prompt resolution of employment disputes. Respondents instead actually suggest that Maryland's three-year catch-all limitations period better furthers that national policy. For support they opine that the six-month period will encourage "hastily drafted complaints", Respondents' Brief, p. 44, and still more dubiously assert that "§ 1981 claims typically depend heavily on documentary proof",[9] Respon-

[9] While some civil rights claims may "depend heavily on documentary proof", others very clearly do not. And the type of documentary proof that may be important in a discharge case (employer records, statistics and the like) is singularly un-

dents' Brief, p. 45. Respondents also attempt to prove the unprovable — that a three-year period complements the national policy of prompt resolution of employment disputes better than the six month period (an assertion that would be a great surprise to Congress and the many state legislatures that have adopted six month provisions).

Respondents also make the claim that a three-year period would foster "informal dispute resolution before litigation", Respondents' Brief, p. 46, because it would permit an employee to file a § 49B claim before electing to file a § 1983 claim. Respondents' assertion: (1) directly conflicts with this Court's disposition of almost precisely the same argument in *Johnson v. Railway Express Agency, supra,* 461 ("these are the natural effects of the choice Congress has made available to the claimant by its conferring upon him independent administrative and judicial remedies; the choice is a valuable one"; and (2) disregards the fact that if an employee pursues his Art. 49B claim through judicial review, he cannot later resort to a § 1983 claim, whether the limitations period is six months or six years, because the decision of the state court will be claim preclusive. *Migra v. Warren City School District, Board of Education, supra.*

As demonstrated in Petitioner's initial brief, pp. 32-34, other federal policies to be considered similarly suggest no reason for disregarding Maryland's six month provision. Deterrence and compensation are hardly impaired by the application of a state statute of limitations which permits assertion of § 1983 rights with full vigor. No doubt application of a six month limitations period, like adoption of state tolling (*Tomanio*) or survivorship rules (*Robertson*

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available to the employee prior to suit. The idea that an employee if given greater than six months can gather such data is pure fiction.

v. Wegman) may result in defeat of some § 1983 actions, but as this Court has observed, that is surely not dispositive. *Tomanio, supra,* 488; *Robertson, supra,* 593.

Finally, Respondents, while conceding that this Court has "recognized that it is not essential that statutes of limitations governing federal civil rights be nationally uniform" make the incredible assertion that "no state law has settled on a period of less than one year for civil rights actions," and therefore application of the Maryland Statute would frustrate a uniformity policy. Brief of Respondents at 55. In fact, only two circuits, other than the court below, have considered what limitations period is to be applied in an employment discrimination suit brought under the civil rights acts by a public employee.[10] And the First Circuit in a series of well reasoned opinions has concluded that a six month limitations period is applicable to such cases. *See e.g. Holden v. Massachusetts Comm'n Against,* 671 F.2d 30 (1st Cir.), *cert denied,* 103 S. Ct. 97 (1982); *Burns v. Sullivan,* 619 F.2d 99 (1st Cir.), *cert denied,* 449 U.S. 893 (1980). The Eighth Circuit held to the contrary in *Chambers v. Omaha Public School District,* 536 F.2d 222 (8th Cir. 1976) but did not address the fact that the plaintiff was a public employee or whether that employee's rights were as full and detailed as those available to Maryland public employees. In sum, despite their best efforts Respondents have utterly failed to demonstrate that even the decisions of the lower courts,

[10] All of the other cases listed in Respondents' Appendix involve either private rather than public employees, *See, e.g. Ingram v. Steven Robert Corp.,* 547 F.2d 1260 (5th Cir. 1977); *Tyler v. Reynolds Metal Co.,* 600 F.2d 232 (9th Cir. 1979); *Morton v. Georgia Pacific Corp.,* 568 F.2d 58 (8th Cir. 1977); *Movement for Opportunity & Equality v. General Motors Corp.,* 622 F.2d 1235 (7th Cir. 1980), or do not involve employment discrimination disputes at all. *See e.g., Williams v. Walsh,* 558 F.2d 667 (2d. Cir. 1977) (termination) *Skung v. Anderson,* 452 F.2d 632 (9th Cir. 1971) (illegal search); *Warren v. Norman Realty Co.,* 513 F.2d 730 (8th Cir. 1975).

let alone those of this Court, require the conclusion that the Maryland statute is simply too short to be consistent with § 1983 and its policies.[11]

[11] Respondents final argument is that even if the trial court were correct that Art. 49B provides the appropriate limitations period, it should not have applied that limitation to this case because a three-year statute of limitations was "settled precedent" in Maryland (Respondents' Brief at 55-58). Reliance on *Chevron Oil Co. v. Huson*, 404 U.S. 97 (1971) in support of this proposition is totally misplaced. *Chevron Oil* provides that if during the pendency of an action, *this* Court establishes a new rule, that was clearly unforseeable or overrules a consistent line of cases, and this change prejudices a party, the rule will not, under certain circumstances, be given retroactive application. Here no consistent line of cases has been overruled and nothing unforseeable would occur if the Fourth Circuit decisions were reversed. *See e.g. Burns v. Sullivan*, 619 F.2d 99 (1st Cir.) *cert. denied*, 449 U.S. 893 (1980) where the court declined to upset a decision applying a six month limitations period in a § 1983 action. Respondents' authority shows only that in the past, some U.S. district courts had accepted the three year limitations period without discussion. It is improbable, in fact, that these decisions would have discussed Art. 49B as the appropriate limitations period because only two of the cases cited are employment discrimination cases and neither involves a public employee. Finally, Respondents were not the first to have their action barred by the Art. 49B limitations. At the time this case was decided, the Maryland District Court had applied the six-month period of that statute in at least four cases: *Lay v. Bethlehem Steel*, 542 F. Supp. 9 (D. Md.) *aff'd*, on other grounds, 681 F.2d 814 (4th Cir.), *cert. denied*, 103 S. Ct. 497 (1982); *McKee v. SCM Corp.*, No. R-79-162 (D. Md., Jan. 29, 1982) (unpubl.); *Brice v. Crown, Cork & Seal Co.*, No. H-78-1207 (D. Md. Jan. 15, 1982) (oral opinion) and *McGill v. General Electric Co.*, 524 F. Supp. 1126 (D. Md. 1981).

CONCLUSION

The Respondent employees used § 1983 to challenge discharges from public employment that they assert were racially based. Maryland's fair employment practices act which requires prompt filing of such complaints is the state statute most analogous to their cause of action. The statute of limitations governing it is neither "too short" nor insufficiently "judicial." The lower court erred when it declined to adopt Maryland's six month limitation period. Its judgment should be reversed.

Respectfully submitted,

STEPHEN H. SACHS,
Attorney General of Maryland,

PAUL F. STRAIN,
Deputy Attorney General,

DIANA GRIBBON MOTZ,
CHRISTINE STEINER,
ROBERT A. ZARNOCH,
Assistant Attorneys General,
Counsel of Record,
Seven North Calvert Street,
Baltimore, Maryland 21202,
(301) 576-6338,
Counsel for Petitioners.